

## **Senate Joint Resolution No. 25**

### **RESOLUTION CHAPTER 168**

Senate Joint Resolution No. 25—Relative to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

[Filed with Secretary of State August 30, 2004.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**SJR 25, Ortiz. Medicare prescription drugs.**

This measure would memorialize the Congress and President of the United States to enact and sign into law specified revisions to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

WHEREAS, On December 8, 2003, the President signed into law the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (P.L. 108-173, hereafter the "Act"); and

WHEREAS, Under the Act, a drug benefit will be made available to Medicare beneficiaries starting in 2006, which will be delivered through private risk-bearing entities under contract with the United States Department of Health and Human Services; and

WHEREAS, The Act provides for premium, deductible, and other cost-sharing subsidies for beneficiaries who are dually eligible for Medicare and Medi-Cal, or have incomes below 150 percent of the federal poverty level; and

WHEREAS, Under the Act, low-income beneficiaries must meet an asset limit in order to qualify for the drug coverage subsidies under the Act; and

WHEREAS, The Act also provides for a prescription drug discount card program to be made available starting in June 2004 and continuing through the end of 2005; and

WHEREAS, Beneficiaries with incomes below 135 percent of the federal poverty level who do not have Medicaid coverage do not have to pay any enrollment fee to participate in this prescription drug discount card program and will receive up to a \$600 credit in 2004 and another \$600 credit in 2005 towards the cost of drug purchases; and

WHEREAS, In order to receive the \$600 subsidy under this prescription drug discount card program, beneficiaries cannot be receiving or be eligible for any other drug coverage; and

WHEREAS, Under the Act, beneficiaries may not change prescription drug discount cards once they have enrolled in the



prescription drug discount card program, except for a one-time change at the start of 2005; and

WHEREAS, Under the Act, sponsors of discount cards will be able to charge enrollees up to a \$30 annual enrollment fee and will be free to make changes in the discounts available to enrollees and in the drugs covered by the cards simply by posting the changes on the Internet; and

WHEREAS, To enroll in the drug plans established through the Act beginning in 2006, beneficiaries will be required to pay an annual premium equal to an estimated \$420 and an annual deductible equal to \$250, after which the plans will cover 75 percent of the costs of covered drugs up to an initial \$2,250 coverage limit, none of the cost of drugs between the \$2,250 coverage limit and a \$5,100 upper limit, and most of the cost of drug expenditures above the \$5,100 cap; and

WHEREAS, No expenditures by third-party coverage sources may be used to satisfy the coverage gap under the Act, referred to as the “donut hole,” requiring beneficiaries to use their own out-of-pocket funds to meet the catastrophic coverage cap under the bill; and

WHEREAS, Only expenditures for drugs that are covered by a drug plan’s formulary may be used to satisfy the coverage gap under the Act; and

WHEREAS, According to the Congressional Budget Office, by indexing premiums, deductible, and other cost sharing limits for beneficiaries to increases in the cost of drugs under the drug program created by the Act, the indexing provisions in the Act will result in premiums increasing to \$696, deductibles increasing to \$445, the initial coverage limit increasing to \$4,000, and the out-of-pocket spending cap increasing to \$6,400 in 2013; and

WHEREAS, The Act precludes the United States Department of Health and Human Services from negotiating with drug manufacturers and wholesalers the costs of drugs to be made available under the new drug benefit and instead relies on individual sponsors of the drug discount cards, the prescription drug plans, and Medicare Advantage managed care plans providing prescription drug coverage to negotiate the rates for drugs; and

WHEREAS, Individual sponsors of drug discount cards and prescription drug plans and Medicare Advantage managed care plans are unlikely to receive the same low prices the federal government would get by negotiating collectively for beneficiaries, as evidenced by highly successful federal purchasing programs such as the Veterans Administration; and

WHEREAS, The Act makes importation of drugs by wholesalers and individuals legal only if the Secretary of the United States Department of Health and Human Services certifies that the importation poses no



additional risk to the public's health and safety, and the current Secretary of Health and Human Services has stated that he cannot make the certification; and

WHEREAS, As of January 1, 2006, states will no longer be able to receive federal Medicaid matching funds to cover prescription drugs for dual eligible beneficiaries, including funds to help meet cost-sharing requirements or to cover drugs not covered under the new drug benefit due to a plan's formulary, with the result that drug coverage for dual eligible beneficiaries will likely be reduced as a result of the Act; and

WHEREAS, Under the Act, states must make financial maintenance of effort payments to the federal government for the cost of coverage under the Act for dual eligible beneficiaries which are the product of three elements: (1) a "take back" factor, which is set at 90 percent for 2006 and phased down to 75 percent in 2015; (2) the number of dual eligibles; and (3) the per capita level of spending by state Medicaid programs in 2003, trended forward through 2006 by a growth factor; and

WHEREAS, As a result of the financial maintenance of effort requirements in the Act, states including California will experience little fiscal relief from the assumption of prescription drug coverage for the dual eligible population by the Medicare program; and

WHEREAS, In 2004 the Act has resulted in potential problems of patient access to cancer treatment in doctor's offices, because the payment amounts for 2004 for some drugs are lower than the price at which physicians can purchase them; and

WHEREAS, For 2005 and later years, the Act reduces the payments for cancer treatment drugs and administration services further relative to their 2004 levels, with no mechanism for adjustments to ensure that the payment levels are not lower than the prices at which physicians can purchase them; and

WHEREAS, Under the Act, \$900 million is appropriated to the federal Centers for Medicare and Medicaid Services for administration of the Act, including funds to educate beneficiaries about their options under the Act; however, no funds are specifically allocated for the Health Insurance Counseling and Advocacy Program, the primary entity responsible for direct one-on-one unbiased counseling regarding Medicare benefits; and

WHEREAS, As a result of the provisions of the Act, beneficiaries face limited protections from the rising costs of prescription drugs; now, therefore, be it

*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California memorializes the Congress and President of the United States to enact and sign into law revisions to the Medicare Prescription Drug, Improvement, and



Modernization Act of 2003 to: Index increases in beneficiaries' premiums, deductibles, and cost sharing limits to increases in Social Security benefits or changes in income for beneficiaries; give authority to the Secretary of the United States Department of Health and Human Services to negotiate the prices of drugs to be made available to beneficiaries under the Act; to direct the Secretary to work with states on establishing workable systems to enable beneficiaries and others to safely import drugs from Canada; to allow states to receive matching funds if they choose to maintain the existing level of drug coverage for beneficiaries who are dually eligible for Medicare and Medicaid; to require exceptions, or a similar process, under which the Centers for Medicare and Medicaid Services must ensure that the payment amounts for cancer treatment drugs in 2005 and in later years are sufficient to cover physicians' costs of acquiring these drugs; to revise the Act's transitional adjustment payment for drug administration services to an amount that will maintain net revenue available to physicians from drugs and drug administration services in 2005 and 2006 at the same level as in 2004; to eliminate or significantly reduce state maintenance of effort payments to the federal government for the costs of drug coverage for dual eligible beneficiaries; and to require that a portion of the funds appropriated to the Centers for Medicare and Medicaid Services be allocated to the state Health Insurance and Counseling and Advocacy Program to ensure that California's Medicare beneficiaries receive the necessary counseling and assistance to understand all of their health coverage options; and be it further

*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, Members of the United States Congress, and the Governor.

